

### Remarks

In the Office Action mailed January 30, 2004, claims 1-43 of the present application were rejected and claims 2, 10, 12, 20, 37, and 42 were also objected to. By this Amendment Applicants kindly request amendment to claims 2, 10, 12, 18, 20, 36, 37 and 42. Applicant also respectfully traverses all rejections and objections and kindly requests reconsideration of all pending claims, as amended.

Specifically, the Office Action objected to claims 2, 10, 12, 20, 37, and 42 due to certain identified informalities. By this amendment such informalities have been addressed. Applicants wish to thank the Examiner for identifying these informalities.

The Office Action also rejected claims 2, 12, 17, 18, 20, 30, 35, and 36 under 35 USC 112 stating that the terms "coverage" and "dependability" were not clear. Applicants have amended the affected claims to replace the term 'coverage' with an alternate term that has support in the specification (See page 15, lines 20-25) and whose meaning is clearly understood by users of English language. In addition, Applicants insist the term 'dependability' is a clearly understood word in the English language. There is no special meaning attributed to the term by the specification.

Claims 1, 3-11, 13-16, 19, 21-29, 31-34, and 37-41 were rejected under 35 USC 103(a) as being unpatentable over Siu et al. in view of Posthuma and other references. Applicants respectfully traverse these rejections.

Independent claims 1, and 19 relate to *'predicting the ability of an existing line to support high-speed access'*. Such limitation and corresponding features are recited throughout the independent claims and corresponding dependent claims. Likewise, independent claim 37 and its' dependent claims all relate to *'predicting the data rate of a line'*. Converseley, the primary reference, Siu et al., relates and discloses the testing of a remote programmable testing device. In other words, Siu tests or evaluates a remote testing device, whereas, the present claims are directed to assessing telephone lines (Emphasis added). The Office Action incorrectly notes that column 2, lines 27-38 of Siu et al teaches receiving the results of line testing, when, in actuality, such teachings of Siu et al. are directed to the *"tests the operational capability of ...a plurality of prescribed signal processing functions contained within a remote, programmable test device, ... As a result of this comparison, the ...status of the device is classified into one of three categories..."*(Emphasis added).

For this reason, the characterization of the Siu et al. primary reference in the Office Action is wrong and all rejections of pending claims based on such primary

reference are flawed. In addition, there is no motivation or suggestion, whatsoever, in either Siu et al. or the secondary reference, Posthuma, to modify the teachings of Siu et al. in a manner suggested or implied by the Office Action nor to combine the teachings of Siu et al. and Posthuma to achieve the claimed invention. Moreover, even if there were suggestions or motivation to combine the teachings, the proposed combination would not equate to the present invention.

Clearly, the Posthuma reference is a more appropriate reference since it is attempting to address the same general problem as the present invention, namely qualification of high speed lines, but Posthuma addresses the problem in a somewhat different manner. Applicants also submit that Posthuma is clearly a 102(e) reference that has a filing date of less than one year from the priority date of the present application. Thus, the effectiveness of the Posthuma reference as 'prior art' may come into question. Furthermore, there are significant differences between the present invention, as claimed, and the Posthuma reference also that makes any rejection based on the Posthuma reference suspect.

Claims 42-43 were rejected under 35 USC 103(a) as being unpatentable over Bingel et al. in view of Posthuma. Independent claim 42 recites:

*A method of predicting the data rate of a line under test within a cable bundle, comprising:*


- a) determining a model of noise on the line from a prediction of the number of disturbing signals that are carried within the cable bundle; and*
- b) de-rating the performance of the line based on the noise model.*

Clearly, the claims 42 and 43 deal with line testing and de-rating the performance of the line. Converseley, Bingel relates and discloses the testing of data communications equipment and the noise models disclosed therein are in associated with such data communications equipment. In addition, there is no motivation or suggestion, whatsoever, in either Bingel et al. or the secondary reference, Posthuma, to modify the teachings of Bingel et al. in a manner suggested by the Office Action nor to combine the teachings of Bingel et al. and Posthuma to achieve the claimed invention. Moreover, even if there was a motivation for combining the teachings, the combination would not equate to the present invention, as claimed in claims 42 and 43.

No new matter has been added and no new claim fees are due since the number of pending claims do not exceed the number previously paid for. A petition for an extension of time an appropriate fee is included. The Commissioner is also hereby authorized to charge to this Deposit Account Number for any fee deficiency, or to credit this Deposit Account Number for any overpayment.

Applicant contends that the application is now in condition for allowance. A notice to that effect is earnestly solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'R. Hampsch', with a large, sweeping initial 'R' and a stylized 'M' at the end.

Robert J. Hampsch  
Reg. No. 36,155  
Attorney for Applicant

Atty. Docket : 1342-US  
Telephone : 617-422-2919  
Fax : 617-422-2290